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BOARD OF SUPERVISORS

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June 01, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

35

JUNE 1, 2010

Sachi A. Hamai

SACHI A. HAMAI
EXECUTIVE OFFICER

**APPROVAL TO AMEND FOUR
TEMPORARY PERSONNEL SERVICES AGREEMENTS
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request approval to amend four temporary personnel services agreements with Maxim Staffing Solutions and Public Health Foundation Enterprises which support various Department of Public Health programs, to extend the term up to six months, on a month-to-month basis, through December 31, 2010.

IT IS RECOMMENDED THAT YOUR BOARD:

Authorize the Director of the Department of Public Health (DPH), or his designee, to execute amendments to four Temporary Personnel Services Agreements (substantially similar to Exhibit I) with Maxim Staffing Solutions (Maxim) and Public Health Foundation Enterprises (PHFE) which support multiple projects in various DPH programs identified on Attachment A, to extend the terms up to six months, on a month-to-month basis, effective upon execution by both parties, but no sooner than date of Board approval through December 31, 2010, or until a competitive selection process is completed, whichever is sooner, funded by federal, State, and net County cost (NCC).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended action will allow DPH to amend four temporary personnel services agreements to extend the terms for up to six months, through December 31, 2010, on a month-to-month basis, and allow sufficient time to complete a Request for Statement of Qualification (RFSQ)

for temporary personnel services. In December 2009, DPH began working on the RFSQ however, due to a shortage of staff and an excessive workload, the RFSQ will not be completed prior to June 30, 2010. DPH anticipates that the RFSQ will be completed no later than December 31, 2010.

On September 19, 2006, your Board approved the use of temporary personnel services through June 30, 2010; however, four projects will not be completed by this date and will need to be extended in order to meet project obligations. The extensions requested with Maxim and PHFE for these four projects will enable DPH to continue to meet a variety of program needs that have varying terms and funding cycles.

Temporary personnel services have continued to be utilized only for the most critical and hard-to-recruit Department functions which County employees and individuals on the County re-employment personnel list are unable to provide.

Implementation of Strategic Plan Goals

This recommended Board action supports Goal 1, Operational Effectiveness, of the County's Strategic Plan by allowing DPH programs to meet their goals by utilizing specialized temporary personnel for short-term and/or long-term projects.

FISCAL IMPACT/FINANCING

The total program cost for PHFE Agreement Number PH-000546-1 for the Community Health Services' Youth Activism Against Obesity Project (YAAO) for the period of July 1, 2010 through July 11, 2010 is \$26,000, for various temporary personnel positions to support YAAO, comprised of unspent funds from fiscal year (FY) 2009-10; 100 percent funded by the Vitamin Cases Consumer Settlement Fund Grant Agreement.

The total program cost for PHFE Agreement Number PH-000597 for the Office of AIDS Programs and Policy (OAPP) for the period of July 1, 2010 through December 31, 2010 is approximately \$175,155, for seven Community Service Counselors to continue to provide Human Immunodeficiency Virus (HIV) counseling and testing services in the Los Angeles County Sheriff's Department Custody System (jails), 100 percent grant funded by the Federal Expanded and Integrated HIV Testing Initiative.

The total program cost for Maxim Agreement Number PH-000591 for OAPP for the period of July 1, 2010 through December 31, 2010 is approximately \$56,000, for two data entry verification staff to continue to verify client information on both Counseling and Testing and Health Education and Risk Reduction forms in order to integrate data into the Teleform Scanning Data Collection System, 100 percent funded by the Federal Expanded and Integrated HIV Testing Initiative.

The total program cost of PHFE Agreement Number H-702420-04 for the HIV Epidemiology Program for the period of July 1, 2010 through December 31, 2010 is \$321,021, for various temporary personnel positions to support reporting of prevalent HIV cases in Los Angeles County and the utilization of a new reporting system. Funding is comprised of: 1) \$65,320 from Incidence and Variant, Atypical and Resistant HIV Strains Surveillance; 2) \$108,988 from National HIV Behavioral Surveillance; 3) \$29,608 from Enhanced Prenatal Surveillance; and 4) \$117,105 from NCC.

Funding for these services is included in DPH's FY 2010-11 Proposed Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

For a number of years, the County has contracted with various contractors for the provision of as-needed temporary personnel for DPH. These services are essential to meet a variety of program needs to support short-term and/or long-term projects.

County Counsel has approved Exhibit I as to form. Attachment A provides a list of the four temporary personnel service agreements requesting extension.

CONTRACTING PROCESS

On June 9, 2006, a Request for Statement of Qualification (RFSQ) was released for temporary personnel services. As a result of the RFSQ, Maxim and PHFE submitted proposals and were selected as the contractors to provide temporary personnel services.

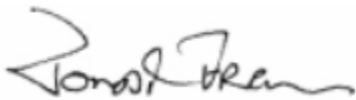
On September 19, 2006, your Board approved PHFE and/or Maxim to support a variety of DPH temporary personnel projects with various terms based on each project, effective October 1, 2006 through June 30, 2007, with provisions for 3 one-year automatic renewals through June 30, 2010.

In June 2010, the RFSQ is anticipated to be released for a temporary personnel services Master Agreement to meet various DPH needs requiring varying terms and funding. The term of the Master Agreement will be five years.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommended action will ensure the continued availability of temporary personnel services for DPH and allow additional time to complete the solicitation process.

Respectfully submitted,



JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

JEF:ar

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

EXHIBIT I

Contract No. _____

TEMPORARY PERSONNEL SERVICES AGREEMENT

Amendment Number {ENTER NUMBER}

THIS AGREEMENT is made and entered into this _____ day
of _____, 2010,

by and between

COUNTY OF LOS ANGELES
(hereafter "County"),

and

(hereafter Contractor").

WHEREAS, reference is made to that certain document entitled "TEMPORARY PERSONNEL SERVICE AGREEMENT", dated September 19, 2006, and further identified as Agreement Number {ENTER AGREEMENT NUMBER}, and any Amendments thereto (all hereafter "Agreement"); and

WHEREAS, it is the intent of the parties hereto to amend the Agreement to extend the contract term and provide other changes set forth herein; and

WHEREAS, said Agreement provides that changes may be made in the form of a written Amendment which is formally approved and executed by the parties.

NOW, THEREFORE, the parties agree as follows:

1. This Amendment shall be effective on {BOARD APPROVED CONTRACT START DATE}.

2. Paragraph 1, TERM AND TERMINATION, of the Agreement shall be amended to read as follows:

“1. TERM AND TERMINATION: This Agreement shall be effective upon execution by both parties, but no sooner than date of Board approval, and shall continue in full force and effect through December 31, 2010, on a month-to-month basis, subject to the availability of federal, State, or County funding sources. In any event, County may terminate this Agreement in accordance with the TERMINATION Paragraphs of the ADDITIONAL PROVISIONS hereunder.

Director may terminate this Agreement at the end of any calendar month between July 1, 2010 and December 31, 2010, by giving the Contractor ten (10) calendar days written notice to the Contractor.

Director may terminate this Agreement immediately if Contractor, or any of its officers, employees or agents, including its independent contractors, fail to comply with the terms of this Agreement or any directions by or on behalf of County issued pursuant hereto.

Director may also terminate this Agreement immediately if Contractor, its officers, employees or agents, including its independent contractors, engage in, or if Director has reasonable justification to believe that Contractor, or such employees or agents, including Contractor's independent contractors, may be engaging in a course of conduct which poses an imminent danger to the life or health of County patients.

County's failure to exercise this right of termination shall not constitute waiver of such right, and the same may be exercised at any subsequent time.

Immediate termination hereunder shall be effected by delivery to Contractor of a

written "Notice of Immediate Termination" which shall be effective upon Contractor's receipt of such 'Notice of Immediate Termination'."

3. Paragraph 2, DESCRIPTION OF SERVICES, of the Agreement shall be amended to read as follows:

"2. DESCRIPTION OF SERVICES: Contractor agrees to provide temporary personnel services, upon request and upon qualification of Contractor's temporary personnel service plan and staff (at the Director's sole discretion), the personnel items are describe in, but not limited to Exhibit {ENTER EXHIBIT LETTER(S)}, and Scope of Work {ENTER SCHEDULE NUMBER}, attached hereto and incorporated herein by reference .

Upon Contractor's qualification by Director to provide temporary personnel services, Contractor will be sent a finalized approved project budget and scope of work detailing the total cost, the scope of work required and the term of the project."

4. Paragraph 3, MAXIMUM OBLIGATION, of the Agreement shall be amended to read as follows:

"3. MAXIMUM OBLIGATION: During the period of {BOARD APPROVED CONTRACT START DATE} through December 31, 2010, the maximum obligation for the County for all services provided hereunder shall not exceed {ENTER ALLOCATION IN WORDS} Dollars {ENTER ALLOCATION NUMERICALLY}.

Such maximum obligation is comprised of {ENTER FUNDING SOURCE(S)} funds. This sum represents the total maximum obligation of County as shown in Schedule(s) {ENTER SCHEDULE NUMBER}, attached hereto and incorporated herein by reference.”

5. GENERAL INSURANCE REQUIREMENTS Paragraph of the Agreement shall be amended and replaced in its entirety to read as follows:

“GENERAL PROVISIONS FOR ALL INSURANCE COVERAGES: Without limiting Contractor's indemnification of County and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in INSURANCE COVERAGE REQUIREMENTS Paragraph of this Agreement. These minimum insurance coverage terms, types and limits (the “Required Insurance”) also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

A. Evidence of Coverage and Notice to County: A certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor’s General Liability policy, shall be delivered

to the County at the address shown below and provided prior to commencing services under this Contract.

Renewal Certificates shall be provided to County not less than ten (10) days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.

Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000) dollars, and list any County required endorsement forms.

Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Department of Public Health, Contracts and Grants Division
313 North Figueroa Street, 6th Floor-West
Los Angeles, California 90012-2659
Attention of: Patricia Gibson, Acting Division Chief

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor.

Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

B. Additional Insured Status and Scope of Coverage: The County of Los Angeles, its special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum

Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Provisions herein.

C. Cancellation of Insurance: Except in the case of cancellation for non-payment of premium, Contractor's insurance policies shall provide, and Certificates shall specify, that County shall receive not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.

D. Insurer Financial Ratings: Coverage shall be placed with insurers acceptable to the County with an A.M. Best ratings of not less than A:VII unless otherwise approved by County.

E. Failure to Maintain Insurance: Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

F. Contractor's Insurance Shall Be Primary: Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

G. Waivers of Subrogation: To the fullest extent permitted by law, the

Contractor hereby waives its rights and its insurer(s)' right of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

H. Compensation for County Costs: In the event that Contractor fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Contractor shall pay full compensation for all costs incurred by County.

I. Sub-Contractor Insurance Coverage Requirements: Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

J. Deductibles and Self-Insured Retentions (SIRs): Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects to the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State

of California.

K. Claims Made Coverage: If any part of the Required Insurance is written on claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

L. Application of Excess Liability Coverage: Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

M. Separation of Insureds: All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

N. Alternative Risk Financing Programs: The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

O. County Review and Approval of Insurance Requirements: The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures."

6. INSURANCE COVERAGE REQUIREMENTS Paragraph of Agreement shall be amended and replaced in its entirety to read as follows:

“INSURANCE COVERAGE REQUIREMENTS:

A. Commercial General Liability Insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than the following:

General Aggregate:	\$2 Million
Products/Completed Operations Aggregate:	\$1 Million
Personal and Advertising Injury:	\$1 Million
Each Occurrence:	\$1 Million

B. Automobile Liability Insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 Million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including "owned", "leased", "hired" and/or "non-owned" vehicles, or coverage for "any auto", as each may be applicable.

C. Workers Compensation and Employers' Liability: Insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include

an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

D. Professional Liability/Errors Omissions Insurance: Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 Million per occurrence and/or claim and \$3 Million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

E. Sexual Misconduct Liability: Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2 Million per claim and \$2 Million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature."

7. The following paragraph shall be added to the Agreement as follows:

"DEFAULTED PROPERTY TAX REDUCTION PROGRAM

A. CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM: Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this agreement will maintain compliance, with Los Angeles County Code Chapter 2.206.

B. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM: Failure of Contractor to maintain compliance with the requirements set forth in the "CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM" Paragraph immediately above, shall constitute default under this agreement. Without limiting the rights and remedies available to County under any other provision of this agreement, failure of Contractor to cure such default within ten (10) calendar days of notice shall be grounds upon which County may terminate this agreement and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206."

8. CONTRACTOR'S OBLIGATIONS AS A BUSINESS ASSOCIATE UNDER
THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Paragraph of the Additional Provisions shall be amended and replaced in its entirety to read as follows:

"CONTRACTOR'S OBLIGATIONS AS A BUSINESS ASSOCIATE UNDER
THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL
HEALTH ACT (BUSINESS ASSOCIATE AGREEMENT): Under this Agreement, Contractor ("Business Associate") provides services ("Services") to County ("Covered Entity") and Business Associate receives, has access to or creates Protected Health Information in order to provide those Services.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (together, the "Privacy and Security Regulations"). The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate ("Business Associate Agreement") in order to mandate certain protections for the privacy and security of Protected Health Information,

and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA's Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

A. DEFINITIONS:

(1) "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402.

(2) "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.

(3) "Electronic Health Record" has the same meaning as the term "electronic health record" in the HITECH Act, 42 U.S.C. section 17921.

Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(4) “Electronic Media” has the same meaning as the term “electronic media” in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission. The term “Electronic Media” draws no distinction between internal and external data, at rest (that is, in storage) as well as during transmission.

(5) "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.

(6) "Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(7) "Minimum Necessary" refers to the minimum necessary standard in 45 C.F.R. § 162.502 (b) as in effect or as amended.

(8) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.

(9) "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable

basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Health Information.

(10) "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

(11) "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However,

Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.

(12) "Security Rule" means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160 and 164.

(13) "Services" has the same meaning as in the body of this Agreement.

(14) "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.

(15) "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.

(16) Terms used, but not otherwise defined in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations and HITECH Act.

B. OBLIGATIONS OF BUSINESS ASSOCIATE:

(1) Permitted Uses and Disclosures of Protected Health Information. Business Associate:

a. shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections B(4) through B(10), D(3), and E(2) of this Agreement;

b. shall Disclose Protected Health Information to Covered Entity upon request;

c. may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

1) Use Protected Health Information; and

2) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

(2) Prohibited Uses and Disclosures of Protected Health Information. Business Associate:

a. shall not Use or Disclose Protected Health Information for fundraising or marketing purposes.

b. shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the

Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates.

c. shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

(3) Adequate Safeguards for Protected Health Information.

Business Associate:

a. Shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy Regulation's minimum necessary standard as in effect or as amended.

b. As to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information; effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312, and shall comply with the Security Rule's policies and procedure and documentation requirements.

(4) Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information.

Business Associate

a. Shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, Agents, subcontractors, or other parties under Business Associate's control with access to Protected Health Information but which is not specifically permitted by this Business Associate Agreement or otherwise required by law.

b. Shall report to Covered Entity each Security Incident of which Business Associate becomes aware.

c. Shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors

of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency.

1) Immediate Telephonic Report. Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information by telephone call to [To Be Determined], telephone number (562) 940-3335.

2) Written Report. Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) business days from the date of discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach by the Business

Associate to the Chief Privacy Officer at:

Chief Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple Street, Suite 525
Los Angeles, California 90012
HIPAA@auditor.lacounty.gov
(213) 974-2166

i) The notification required by section 2.4 shall include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used, or Disclosed; and

ii) The notification required by section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. 164.404(c), including:

1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were

involved);

3. Any other details necessary to conduct an assessment of whether there is a risk of harm to the Individual;

4. Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the breach;

5. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and

6. The name and contact information for the person most knowledge regarding the facts and circumstances of the Breach.

If Business Associate is not able to provide the information specified in section B(3)(a) and B(3)(b) at the time of the notification required by section B(4) 2), Business Associate shall provide such information promptly thereafter as such information becomes available.

3) Request for Delay by Law Enforcement. Business Associate may delay the notification required by section 2.4 if a law enforcement official states to Business Associate that

notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in Paragraph (a) of this section is submitted during that time.

(5) Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.

(6) Breach Notification. Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information, provide Breach notification for each and every Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or subcontractors, in a

manner that permits Covered Entity to comply with its obligations under Subpart D, Notification in the Case of Breach of Unsecured PHI, of the Privacy and Security Regulations, including:

- a. Notifying each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of such Breach;

- b. The notification required by paragraph (a) of this Section 2.6 shall include, to the extent possible:

- 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- 2) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

- 3) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;

- 4) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and

to protect against any further Breaches; and

5) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

6) The notification required by paragraph (a) of this section shall be written in plain language

Covered Entity, in its sole discretion, may elect to provide the notification required by this Section 2.6, and Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, including costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information.

(7) Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such

request.

(8) Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

(9) Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

(10) Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information maintained in an Electronic Health Record for treatment, payment, and health care operations.

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure.

Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in

accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

(11) Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties and fines (including regulatory penalties and/or fines), and expenses (including attorney and expert witness fees), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement; Business Associate's obligations under this provision extend to compliance and/or enforcement actions and/or activities, whether formal or informal, of Secretary of the federal Department of Health and Human Services and/or Office for Civil Rights.

C. OBLIGATION OF COVERED ENTITY

(1) Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

D. TERM AND TERMINATION

(1) Term. The term of this Business Associate Agreement shall be the same as the term of this Agreement. Business Associate's obligations under Sections B(1) [as modified by Section D(2)], B(4) through B(10), D(3), and E(2) shall survive the termination or expiration of this Agreement.

(2) Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall:

a. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;

b. Immediately terminate this Agreement if a party has breached a material term of this Agreement and cure is not possible; or

c. If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.

(3) Disposition of Protected Health Information Upon Termination or Expiration.

a. Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business

Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

E. MISCELLANEOUS

(1) No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

(2) Use of Subcontractors and Agents. Business Associate shall require

each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Business Associate Agreement.

(3) Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to another provision of this Agreement, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of this Agreement.

(4) Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy or Security Regulations means the section as in effect or as amended.

(5) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.

(6) Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations and other privacy laws governing Protected Health Information.”

9. Exhibit(s) {ENTER EXHIBIT LETTER(S)}, "SCOPES OF WORK FOR TEMPORARY PERSONNEL SERVICES", is/are attached hereto and incorporated herein by reference.

10. Schedule(s) {ENTER SCHEDULE NUMBER}, "BUDGET FOR TEMPORARY PERSONNEL SERVICES", is/are attached hereto and incorporated herein by reference.

11. Except for the changes set forth hereinabove, Agreement shall not be changed in any respect by this Amendment.

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IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Director of Public Health, and Contractor has caused this Agreement to be subscribed in its behalf by its duly authorized officer, the day, month, and year first above written.

COUNTY OF LOS ANGELES

By _____
Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

Contractor

By _____
Signature

Printed Name

Title _____
(AFFIX CORPORATE SEAL)

APPROVED AS TO FORM BY THE
OFFICE OF THE COUNTY COUNSEL
ANDREA SHERIDAN ORDIN
County Counsel

APPROVED AS TO CONTRACT
ADMINISTRATION:

Department of Public Health

By _____
Patricia Gibson, Acting Chief
Contracts and Grants Division

Temporary Personnel Services Agreements Proposed Extension

	Contract Number	Program Office	Provider	Service	Fiscal Year 2009-10 Funding	Contract Expiration	Proposed Extension	Fiscal Year 2010-11 Funding
1	PH-000546-1	Community Health Services- Youth Activism Against Obesity Project	Public Health Foundation Enterprises	Temporary Personnel Services	\$613,261	6/30/10	7/11/10	\$26,000
2	PH-000597	Office of AIDS Programs and Policy	Public Health Foundation Enterprises	Temporary Personnel Services	\$351,709	6/30/10	12/31/10	\$175,155
3	PH-000591	Office of AIDS Programs and Policy	Maxim Staffing Solutions	Temporary Personnel Services	\$208,800	6/30/10	12/31/10	\$56,000
4	H-702420-4	HIV Epidemiology Program	Public Health Foundation Enterprises	Temporary Personnel Services	\$724,048	6/30/10	12/31/10	\$321,021